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EXAMINER				
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JERRY.SHORMA@HP.COM
ipa.mail@hp.com
jessica.l.fusek@hp.com



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/826,481
Filing Date: April 16, 2004
Appellant(s): KANOOR ET AL.

Jonathan M. Harris
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 21, 2009 appealing from the Office action mailed October 9, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,477,703 B1

Smith et al.

11-2002

Applicant Admitted Prior Art

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 1-5 and 7-40 are rejected under 35 U.S.C. 102(a) as being anticipated by Smith et al. (US 6,477,703 B1).

Claim 1

Smith discloses a method for updating and maintaining current operating information on a processor-based target device, the method comprising the steps of:

discovering current operating information associated with the target device (column 2, lines 2-6);

comparing the current operating information associated with the target device with updated operating information retrievable from a database (column 2, lines 11-14);

identifying at least one patch applicable to the discovered current operating information associated with the target device (column 2, lines 14-17);

the target device determining if the at least one identified patch has been applied on the target device and, if necessary, applying the at least one identified patch on the target device (column 2, lines 18-28; column 2, lines 6-7, "run on the computer"); and

entering an updated patch status of the target device in the database (column 2, lines 10-11).

Claim 2

Smith discloses the method of claim 1, wherein the current operating information of the target device includes at least one of a group comprised of:

- (a) an identity and version level of at least one software application program currently residing on the target device (column 2, lines 8-10; column 3, lines 8-11);
- (b) an identity and version level of at least one operating system residing on the target device (column 2, lines 8-10; column 3, lines 8-11);
- (c) an identity and version level of at least one hardware device residing on the target device (column 3, lines 25-29); and
- (d) an identity and version level of at least one firmware program residing on the target device.

Claim 3

Smith discloses the method of claim 1, further comprising the steps of: querying the database to determine a patch status of the target device; and identifying gaps in patch coverage for the target device (column 2, lines 10-17).

Claim 4

Smith discloses the method of claim 1, wherein the target device is in communication with a server (column 3, lines 36-45).

Claim 5

Smith discloses the method of claim 1, wherein the discovering step includes a plurality of target devices (column 3, lines 36-45).

Claim 7

Smith discloses the method of claim 1 further comprising a computer readable medium having stored therein instructions for causing a processor to execute the steps of the method (column 3, lines 36-45).

Claim 8

Smith discloses the method of claim 1 wherein the at least one identified patch includes two components comprising a state file for importing into the database and a manifest file used by a target agent on tile target device that provides policy information and security information for the at least one identified patch (column 4, lines 14-20).

Claim 9

Smith discloses the method of claim 8 wherein the state file comprises patch information, detailed information about patch components and patch target information from a patch authority and wherein the manifest file includes patch target information from a patch authority, prerequisite and superceded path information, a plurality of indicators used to determine if a patch is properly installed and information on how to apply a patch (column 4, line 66 to column 5, line 11).

Claims 10-40

The limitations of claims 10-40 correspond to the limitations of claims 1-5 and 7-9 and are rejected in a corresponding manner.

Claim Rejections - 35 USC § 103

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 6,477,703 B1) in view of Applicant Admitted Prior Art (AAPA) (see MPEP 2144.03 C).

Claim 6

Smith did not teach plurality of mobile devices. AAPA demonstrated that it was known at the time of invention to implement computers as mobile devices. It would have been obvious to one of ordinary skill in the art at the time of invention to implement the computers of Smith as mobile devices. This implementation would have been obvious because one of ordinary skill in the art would be motivated to patch all computer types that are out of date.

(10) Response to Argument

A. Anticipation of rejection of claims 1-5 and 7-40

As per independent claim 1, Appellants argued that "Claim 1 requires "the target device determining if the at least one identified patch has been applied on the target device and, if necessary, applying at least one identified patch on the target device." ... A script that interrogates the computer to identify its software component is substantially different from the claim limitation at issue Smith's locally run script does not determine if a patch application

to the computer to possibly be applied to the computer has actually been applied to the computer.” Appellants’ arguments have been fully considered and Examiner respectfully disagrees. Smith teaches “A script is run on the computer system to create a file (called a PSIfile) of the actual operating system, software applications and patches, including versions that are properly installed on the system.” (see at least column 2, lines 6-10). By at least this section the script is run on the target computer and the script identifies patches including versions that are installed on the system. Therefore, the target computer, by the execution of the script, determines if a patch applicable to the computer has been applied since the script determines all the patches and their versions that have been applied on the target device. Appellants also argued that Smith’s script does not apply the identified patch if necessary. In response, Examiner submits that the limitation of applying the patch is only based on if necessary. There is no explicit requirement in the claims of what defines “if necessary” so the claims allow for the applying also to never occur. In addition, Smith teaches applying the patch to the target device (col. 2, lines 24-28). Regardless of any information received from a remote tool the patch is received and applied on the target device by the target device and therefore meets language of the claims.

Appellants also argued use of the word “alternative” in Smith and stated “the Examiner has taken the word “alternatively” out of context. ... The paragraph continues by providing an “alternative” whereby the computer runs the script noted above and then a remote computer determines whether any patches are applicable and have been applied to the computer. Thus, the alternative option is an alternative to a user talking to a technician over the phone, not to the computer having the software to perform the actions locally that are required by Appellants’

claimed invention." Examiner submits that the word "alternatively" was used to describe the execution of the script on the target computer. As detailed in the response above, the alternative embodiment of executing the script on the target computer meets the limitation required by claim 1 because the script executes to determine if a patch applicable to the computer has been applied since the script determines all the patches that have been applied on the target device. In addition, Smith teaches applying the patch to the target device (col. 2, lines 24-28). Regardless of any information received from a remote tool the patch is received and applied on the target device by the target device and therefore meets language of the claims.

As per claims 2-5, 7-40, Appellants argued that the Examiner erred in rejecting these claims because the Examiner erred in rejecting claim 1. Examiner submits that claim 1 is taught by Smith as per the arguments above and therefore, the rejections of claims 2-5 and 7-40 are proper.

B. Obviousness rejection of claim 6

Appellants argued that claim 6 is not rendered obvious by Smith in view of the alleged admitted prior art because of the deficiencies of claim 1. Examiner submits that claim 1 is taught by Smith as per the arguments above and therefore, claim 6 is rendered obvious by Smith in view of the applicant admitted prior art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 2193

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jue S Wang/

Examiner, Art Unit 2193

Conferees:

/Lewis A. Bullock, Jr./

Supervisory Patent Examiner, Art Unit 2193

/Tuan Q. Dam/

Supervisory Patent Examiner, Art Unit 2192